

Remarks

Claims 1, 2, 4-6, 8-12, 14-19, and 21-23 are pending.

It is noted that the Examiner does not include Claim 21 in the listing of pending claims in box 4 of the Office Action Summary, although the Examiner rejects Claim 21 in numbered paragraph 6 on page 2 of the Office Action. It is submitted that Claim 21 is pending. See, for example, the Office Action mailed on April 21, 2009, and the Amendment filed on July 14, 2009. Correction by the Examiner is requested.

REJECTIONS UNDER 35 U.S.C. § 103(a)

The Examiner rejects Claims 1, 2, 4, 5, 8, 11, 12, 14-19 and 21-23 on the ground of being unpatentable over U.S. Patent No. 6,701,521 (McLroy et al.) in view of U.S. Patent Application Publication No. 2002/0010652 (Deguchi).

Claim 1 recites, *inter alia*, sending a hardware identifier representing a target system and a vendor identifier from the target system to the host system over a communication channel; and failing to find the received vendor identifier at the host system and downloading, responsive to such failing to find the received vendor identifier at the host system, the program associated with the received hardware identifier over the communication channel from the host system to the target system.

On pages 29 and 30 of the Office Action, the Examiner argues that Deguchi (paragraph [0070]) discloses a received hardware identifier representing a target system. The Examiner states that “in order for the server terminal to transmit data to a user terminal, the user terminal must communicate an identifier, for example, its terminal ID, to the server so that the server can identify the user terminal”. To make clear, the Examiner is arguing, here, that, for example, in Figure 1 of Deguchi, the user terminal 103 must communicate an identifier, a hypothetical terminal ID, to the server terminal 105 so that the server terminal 105 can identify the user terminal 103.

Assuming, without admitting, that user terminal 103 might have such a hypothetical terminal ID as argued by the Examiner, it is respectfully submitted that Deguchi and/or McLroy et al. do not teach or suggest downloading, responsive to failing to find a received vendor identifier at a host system, a program associated with a received hardware identifier over a communication channel from such host system to a target system.

In Deguchi, server terminal 105 is connected to data network 104 for communicating with user terminals 103 of Deguchi for data transfer. See Deguchi, paragraph [0028]. Also, user terminal 103 is configured to connect to electronic music marker device 101 via cradle type connection unit 102, and is configured to receive, upon

synchronization operation with music marker device 101, bookmark information stored in music marker device 101 of Deguchi. See Deguchi, paragraph [0027]. At best, it is submitted that there is: (a) under the Examiner's argument, a hypothetical terminal ID of user terminal 103 that permits communications between the server terminal 105 and the user terminal 103; and (b) a completely different ID corresponding to the music marker device 101 of Deguchi (paragraphs [0068, [0070] and [0071]), which is not a target system within the context of the Claim 1.

In the Examiner's Response to Arguments, it does not appear that the Examiner disputes Applicants' prior argument (previous Amendment, page 12) that the "ID corresponding to the music marker device" of Deguchi is not a hardware identifier representing a *target system*. Clearly, the Examiner's position is that the terminal 103 of Deguchi is a target system since the Examiner refers to the hypothetical terminal ID of user terminal 103. Therefore, it is clear that the Examiner argues that a hypothetical terminal ID of user terminal 103 permits communications between the server terminal 105 and the user terminal 103 or that user terminal 103 must communicate its hypothetical terminal ID to the server terminal 105 so that the server terminal 105 can identify the user terminal 103.

Accordingly, from the above, it appears that as to the recited hardware identifier representing a target system, the Examiner relies upon the hypothetical terminal ID of user terminal 103. This point will be dealt with, below.

In connection with sending a hardware identifier representing a target system, the Examiner relies (Office Action, page 3) upon McLroy et al. (column 12, lines 30-37 and 45-47) (*emphasis added*):

For example, the application description can contain a Uniform Resource Locator (URL) providing the address on the WWW at which the application can be found (e.g., a URL identifying application source 915 or a location within application source 915). The application description can also contain information identifying the version of the application of interest, the name of the application, the vendor's name, or other such identifying information.

* * *

In one embodiment, portable computer systems 920, 922, 924 and 926 can also communicate their hardware and software attributes to software manager 950.

It is submitted that information identifying the version of an application, an application name, a vendor's name or other such identifying information of McLroy et al. do not teach or suggest a hardware identifier within the context of Claim 1.

McLroy et al. (column 4, lines 43-48) teaches that “the attributes of the client device considered in the specification can include the type of processor, the type of display device (e.g., color or monochrome), or the type of operating system used by the client device, or the amount of memory space available in the client device.” It is submitted that these do not teach or suggest a hardware identifier representing a *target system* within the context of Claim 1. At best, these are attributes of sub-components (i.e., processor, color display device, monochrome display device, operating system, or amount of memory space available) of a client device. Hence, it is submitted that McLroy et al. adds nothing to Deguchi above and beyond the hypothetical terminal ID of user terminal 103, which the Examiner regards as being a hardware identifier representing a target system.

As has been shown above, under the Examiner's argument, a hypothetical terminal ID of user terminal 103 permits communications between the server terminal 105 and the user terminal 103. This has nothing to do with a completely different ID corresponding to the music marker device 101 of Deguchi, which is not a *target system* within the context of Claim 1. At best, the hypothetical terminal ID of the user terminal 103 of Deguchi permits communications between the server terminal 105 and the user terminal 103, or as argued by the Examiner, allows the server terminal 105 to identify the user terminal 103.

Therefore, Deguchi does not teach or suggest the refined recital of failing to find a received vendor identifier at a host system and downloading, responsive to such failing to find such received vendor identifier at such host system, a program *associated with* a received *hardware identifier representing a target system* over a communication channel from such host system to such target system.

Deguchi (paragraphs [0068], [0070] and [0071]; Figures 1 and 15) provides (emphasis added):

[0068] FIG. 15 illustrates a flowchart for illustrating vendor ID tracking system at server terminal of one embodiment. Referring to FIG. 15, at step 1510, server terminal 105 is configured to receive and store device IDs and the corresponding vendor ID. Thereafter, upon detection of user terminal connection at step 1520 and receiving bookmarked music clip information as well as the corresponding device ID, server terminal 105 may be configured to search its vendor ID database 864 to determine whether the received device ID corresponds to a stored vendor ID.

* * *

[0070] Referring back to FIG. 15, if at step 1540 server terminal 105 does not find a matching vendor ID in vendor ID database 864 corresponding to the device ID, then at step 1580, server terminal 105 is configured to retrieve from playlist database 862 information corresponding to the bookmarked music clips and to transmit the retrieved information to user terminal 103. Thereafter at step 1590, server terminal 105 is configured to update user playlist database 863 to update stored information corresponding to the bookmarked music clips for the particular device user.

[0071] In this manner, in accordance with the various embodiments of the present invention, device vendors may be preferably selected and displayed for purchase of bookmarked music clips who correspond to the actual vendors of the music marker devices. By tracking vendor information or ID corresponding to the music marker devices sold by the vendors, when the user of the music marker device decides to purchase the CD or the audio cassette for the bookmarked music clip, the user may be directed to the web site or contact information for the vendor from whom the user purchased the music marker device. Accordingly, preference may be given to device vendors who, in addition to selling CDs and audio cassettes of broadcast music, offer for sale the music marker devices which, the users may operate to bookmark broadcast music clips.

Here, the device ID corresponds to music marker devices sold by vendors. Such music marker devices are not a target system within the context of Claim 1. When the user of the music marker device decides to purchase a CD or audio cassette for a bookmarked music clip, the user may be directed to a web site or contact information for the vendor from whom the user purchased the music marker device. Accordingly, preference may be given to device vendors who, in addition to selling CDs and audio cassettes of broadcast music, offer for sale the music marker devices which, the users may operate to bookmark broadcast music clips. This is completely different from and serves an entirely different function than downloading, responsive to failing to find a received vendor identifier at a host system, a program *associated with* a received *hardware identifier representing a target system* over a communication channel from a host system to a target system.

The hypothetical terminal ID of the user terminal 103 of Deguchi, which the Examiner relies upon to permit communications between server terminal 105 and user terminal 103, or to allow server terminal 105 to identify user terminal 103, also is completely different from and serves an entirely different function than downloading, responsive to failing to find a

received vendor identifier at a host system, a program *associated with* a received *hardware identifier representing a target system* over a communication channel from a host system to a target system.

As to the recited program associated with the recited hardware identifier representing the recited target system being stored at a host system, the Examiner relies (Office Action, page 4) upon McLlroy et al., column 19, lines 21-23:

FIG. 12 is a block diagram showing one embodiment of a system 1200 for updating an application on a portable computer system 1220 in accordance with the present invention. In the present embodiment, applications are located at application source 915 (e.g., a site on the WWW), which is accessed through the Internet 905.

While it is not disputed that this teaches or suggests applications or programs being located at application source 915, and that an application on portable computer system 1220 can be updated with one of those applications or programs, what is disputed is that there is no teaching or suggestion in McLlroy et al. of a program *associated with* the recited *hardware identifier representing* the recited *target system* being stored at such application source 915.

Accordingly, for at least the above reasons, Claim 1 patentably distinguishes over the references.

On pages 26-28 of the Office Action, the Examiner argues that “downloading bookmarked music clip information is functionally equivalent to downloading a program file”. On pages 4 and 5 of the Office Action, the Examiner admits that McLlroy et al. does not teach or suggest the refined recital of failing to find a received vendor identifier at a host system and downloading, responsive to such failing to find such received vendor identifier at such host system, a program associated with a received hardware identifier over a communication channel from such host system to a target system of Claim 1.

Deguchi, which discloses “bookmarked music clips” and music CDs or audio cassettes, does not deal with “programs”, much less downloading a program associated with a received hardware identifier representing a target system over a communication channel from a host system to a target system of Claim 1. Hence, as a completely separate and independent reason in support of the patentability of Claim 1, it is submitted that information corresponding to bookmarked music clips from a playlist database 862 Deguchi, does not teach or suggest a *program associated with* a received *hardware identifier representing a target system* within the context of Claim 1.

Therefore, for any one, some or all of the above reasons, Claim 1 patentably distinguishes over the references.

Claims 2, 4, 5, 8 and 23 depend from Claim 1 and patentably distinguish over the references for at least the same reasons.

Claim 2 is not separately asserted to be patentable except when in combination with the refined recital of Claim 1.

Claim 11 is an independent claim, which recites, *inter alia*, a target system including a hardware identifier representing the target system and a vendor identifier representing a vendor associated with the target system; and a loader routine is further adapted, after failing to find a received vendor identifier at a host system, to download, responsive to such failing to find such received vendor identifier at such host system, a program associated with a received hardware identifier over a communication channel from the host system to the target system.

The Examiner admits (Office Action, page 11) that McLeroy et al. does not teach or suggest a loader routine is further adapted, after failing to find a received vendor identifier at a host system, to download, responsive to such failing to find such received vendor identifier at such host system, a program associated with a received hardware identifier over a communication channel from a host system to a target system.

As was discussed in detail, above, in connection with Claim 1, under the Examiner's argument, a hypothetical terminal ID of user terminal 103 permits communications between the server terminal 105 and the user terminal 103. This has nothing to do with a completely different ID corresponding to the music marker device 101 of Deguchi, which is not a **target system** within the context of Claim 11. At best, the hypothetical terminal ID of the user terminal 103 of Deguchi permits communications between the server terminal 105 and the user terminal 103, or as argued by the Examiner, allows the server terminal 105 to identify the user terminal 103.

Therefore, Deguchi does not teach or suggest the refined recital of a loader routine being adapted, after failing to find a received vendor identifier at a host system, to download, responsive to such failing to find such received vendor identifier at such host system, a program *associated with* a received **hardware identifier representing a target system** over a communication channel from such host system to such target system.

Accordingly, for at least the above reasons, Claim 11 patentably distinguishes over the references.

On pages 26-28 of the Office Action, the Examiner argues that “downloading bookmarked music clip information is functionally equivalent to downloading a program file”. On page 11 of the Office Action, the Examiner admits that McLlroy et al. does not teach or suggest the refined recital of a loader routine is adapted, after failing to find a received vendor identifier at a host system, to download, responsive to such failing to find such received vendor identifier at such host system, a program associated with a received hardware identifier over a communication channel from a host system to a target system of Claim 11.

As a completely separate and independent reason in support of the patentability of Claim 11, it is submitted that information corresponding to bookmarked music clips from a playlist database 862 Deguchi, does not teach or suggest a *program associated with a received hardware identifier representing a target system* within the context of Claim 11.

Therefore, for any one, some or all of the above reasons, Claim 11 patentably distinguishes over the references.

Claims 12, 14-19, 21 and 22 depend either directly or indirectly from Claim 11 and patentably distinguish over the references for at least the same reasons.

Claim 12 further distinguishes over Deguchi as applied to the other references for similar reasons as were discussed, above, in connection with Claim 2.

The Examiner rejects Claim 6 on the ground of being unpatentable over McLlroy et al. in view of U.S. Patent No. 6,496,979 (Chen et al.) and Deguchi.

Claim 6 is an independent claim, which recites, *inter alia*, sending a hardware identifier representing a target system and a vendor identifier from the target system to a host system over the communication channel; and failing to find a file at a host system and downloading, responsive to such failing to find such file at such host system, a program associated with a received hardware identifier over a communication channel from such host system to a target system.

The Examiner admits (Office Action, page 20) that McLlroy et al. does not teach or suggest storing a plurality of identifiers in a file at a host system, and failing to find a file at a host system and downloading, responsive to such failing to find such file at such host system, a program associated with a received hardware identifier over a communication channel from a host system to a target system.

It is submitted that Chen et al. adds nothing to McLlroy et al. regarding this refined recital. The Examiner apparently implicitly concedes this point at page 20 of the Office Action (in other words, the Examiner relies upon Chen et al. only for “storing said plurality of identifiers in a file at the host system”) and relies upon Deguchi as is discussed below.

As was discussed in detail, above, in connection with Claim 1, under the Examiner's argument, a hypothetical terminal ID of user terminal 103 permits communications between the server terminal 105 and the user terminal 103. This has nothing to do with a completely different ID corresponding to the music marker device 101 of Deguchi, which is not a target system within the context of Claim 6. At best, the hypothetical terminal ID of the user terminal 103 of Deguchi permits communications between the server terminal 105 and the user terminal 103, or as argued by the Examiner, allows the server terminal 105 to identify the user terminal 103.

Therefore, Deguchi does not teach or suggest the refined recital of failing to find a file at a host system and downloading, responsive to such failing to find such file at such host system, a program *associated with* a received *hardware identifier representing a target system* over a communication channel from a host system to a target system.

Accordingly, for at least the above reasons, Claim 6 patentably distinguishes over the references.

On pages 26-28 of the Office Action, the Examiner argues that "downloading bookmarked music clip information is functionally equivalent to downloading a program file". On page 20 of the Office Action, the Examiner admits that McLlroy et al. does not teach or suggest the refined recital of failing to find a file at a host system and downloading, responsive to such failing to find such file at such host system, a program associated with a received hardware identifier over a communication channel from a host system to a target system of Claim 6.

As a completely separate and independent reason in support of the patentability of Claim 6, it is submitted that information corresponding to bookmarked music clips from a playlist database 862 Deguchi, does not teach or suggest a *program associated with* a received *hardware identifier representing a target system* within the context of Claim 6.

Therefore, for any one, some or all of the above reasons, Claim 6 patentably distinguishes over the references.

The Examiner rejects Claim 9 on the ground of being unpatentable over McLlroy et al. in view of Deguchi and further in view of Chen et al. and U.S. Patent No. 6,151,643 (Cheng et al.).

Claim 9 depends from Claim 1 and patentably distinguishes over McLlroy et al. and Deguchi for at least the same reasons.

It is submitted that Chen et al. and/or Cheng et al. add nothing to McLlroy et al. and Deguchi to render Claim 1 unpatentable.

The Examiner rejects Claim 10 on the ground of being unpatentable over McLroy et al. in view of Deguchi and further in view of Chen et al.

Claim 10 depends from Claim 1 and patentably distinguishes over the references for at least the same reasons.

Reconsideration and early allowance are requested.

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